

----- Forwarded by Karen Schwinn/R9/USEPA/US on 05/18/2011 02:22 PM -----

From: "Jewell, Michael S SPK" <Michael.S.Jewell@usace.army.mil>
To: "Nawi, David" <David_Nawi@ios.doi.gov>, "Idlof, Patricia S" <PIdlof@usbr.gov>
Cc: "Nepstad, Michael G SPK" <Michael.G.Nepstad@usace.army.mil>, Erin Foresman/R9/USEPA/US@EPA, Karen Schwinn/R9/USEPA/US@EPA
Date: 05/16/2011 04:10 PM
Subject: BDCP Alternatives, NEPA and Corps Permitting

David and Patti:

Thanks for giving us an update on Friday May 6, 2011 regarding the status of the BDCP EIS/EIR for permitting under Section 10 of ESA. DOI provided a verbal summary of alternatives being considered by the BDCP Executive Committee for evaluation in the EIS/EIR. DOI also indicated May 19, 2011 as the date by which the Executive Committee plans to finalize the range of alternatives to be analyzed and requested the Corps identify any questions/concerns about the alternatives before then.

As you know, as part of our pre-application discussions, the lead federal agencies, EPA and the Corps have been considering whether a NEPA/Corps permitting MOU would be appropriate and useful in advancing permit decisions for the BDCP. The Corps has used similar MOUs with other agencies, including CA High Speed Rail and Caltrans, with success. On May 5, we met and agreed that development of such a "NEPA/404 Integration" MOU is important and would continue. As a follow-up to the meeting, the Corps developed an initial draft MOU and on May 12 routed it to agency representatives for review and comment. The MOU is focused on the major decision points for the Corps aligned with NEPA. These points include concurrence on:

1. Project purpose
2. Range of alternatives to be evaluated in the NEPA document
3. Preliminary LEDPA
4. Compensatory mitigation plan.

These steps are identified as checkpoints to either reach agency agreement or elevate specific issues to higher management levels. The agency representatives will be meeting May 25 to discuss comments and advance the MOU.

We would like to continue pursuing an MOU so that we can collectively establish a reasonable process for ensuring the BDCP EIS/EIR includes sufficient information on which to make permit decisions. DOI's recent request for input from the Corps (and EPA) regarding the range of alternatives to be considered in the EIS/EIR is not consistent with pursuing such an MOU. We are concerned that the lead federal agencies, EPA and the Corps have not agreed on the project purpose statement, and now are being requested to provide input on the range of alternatives based on minimal information by May 19. Establishing an MOU outlines information requirements and timelines to be followed by all signatories for each checkpoint.

We acknowledge that there is no requirement that lead federal agencies or permit applicants to engage in pre-application consultation or integrate the Corps permitting process with BDCP NEPA. However, without an MOU, the default process includes the Corps evaluating project information only after receipt of a complete permit application, potentially requiring additional alternatives to be analyzed and supplemental NEPA documentation. Instead, the Corps supports integrating NEPA, ESA, Rivers and Harbors Act of 1899 and Clean Water Act processes and compliance to avoid delays which could result from sequential project review, additional NEPA analyses and difficult permit decisions.

We cannot provide you comments on the possible alternatives under consideration because we have not been provided sufficient information on any of the alternatives to express an opinion on their adequacy for compliance with NEPA, Clean Water Act, or the Rivers and Harbors Act. It would be helpful at our May 25 meeting to assess where the lead agencies and regulatory agencies believe the BDCP EIS/EIR process stands at this time and to reconfirm

a collective decision on pursuing an MOU.

Michael S Jewell
Chief, Regulatory Division
US Army Corps of Engineers, Sacramento District

----- Original Message -----

From: Nepstad, Michael G SPK [<mailto:Michael.G.Nepstad@usace.army.mil>]
Sent: Wednesday, February 01, 2012 04:10 PM
To: Nawi, David
Subject: RE: Federal Coordination Meeting - February 2 (UNCLASSIFIED)

Not sure yet if I can make the call, but in case I can't, here is an update on Corps matters.

Attached is a first draft of a possible letter the Governor may send/give to Defense Secretary in combination with his visit to DC (and possible meeting with the Secretary this month). Corps is evaluating the letter and considering next step(s).

On 27 Jan 2012, DWR staff has told Paul and I that the NEPA-404 integration MOU was dead, by which they mean DWR will issue a statement or letter terminating the effort. We have been waiting for confirmation that DWR does indeed not want to pursue this MOU. MOU is still in our HQ undergoing review.

On 27 Jan 2012, DWR staff has told Paul and I that the idea of the State providing the Corps with some funding to assist in the expediting Corps permit review was a good one and they want to start the process of an MOA between DWR and the Corps under section 214 of the Water Resources Development Act of 2000 (Public Law 106-541) to provide up to \$100,000 for the expedition of SPK reviews. We have been waiting for confirmation that DWR does indeed want pursue this MOA.

Corps and EPA will have monthly section 404 coordination meetings to better coordinate on section 404 matters.

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From: "Jewell, Michael S SPK" <Michael.S.Jewell@usace.army.mil> To: "cenos@water.ca.gov" <cenos@water.ca.gov> Cc: "dalehf@water.ca.gov" <dalehf@water.ca.gov>, "mebbin@emslp.com" <mebbin@emslp.com>, Erin Foresman/R9/USEPA/US@EPA, "Robershotte, Paul J SPD" <Paul.J.Robershotte@usace.army.mil>, "crothers@water.ca.gov" <crothers@water.ca.gov>, "mmmmorrow@water.ca.gov" <mmmmorrow@water.ca.gov>, Tom Hagler/R9/USEPA/US@EPA, "Nepstad, Michael G SPK" <Michael.G.Nepstad@usace.army.mil> Date: 02/01/2012 03:06 PM Subject: RE: Concurrence on 404 Purpose statements (UNCLASSIFIED)

Thanks for forwarding this, Cassandra. I had hoped we'd be given a chance to review a draft of the letter before it was signed/sent, as we discussed. We'll coordinate with EPA and brief our District Commander. Expect a response in a few weeks.

Michael S Jewell Chief, Regulatory Division US Army Corps of Engineers,
Sacramento District

-----Original Message-----

From: Enos, Cassandra [<mailto:cenos@water.ca.gov>] Sent: Wednesday, February 01, 2012 2:28 PM To: Jewell, Michael S SPK Cc: Hoffman-Floerke, Dale; mebbin@emslp.com; Foresman.Erin@epamail.epa.gov; Robershotte, Paul J SPD;

Crothers, Cathy; Morrow, Michelle M; Hagler.Tom@epamail.epa.gov; Nepstad, Michael G SPK Subject: RE: Concurrence on 404 Purpose statements (UNCLASSIFIED)

Mike - Attached is an electronic copy of the letter that went out to Col Leady requesting USACE concurrence on the purpose statements. You should be receiving a hardcopy shortly. Sorry this took so long. Please let me know if you have any questions.

Thank you, Cassandra Enos-Nobriga Program Manager Division of Environmental Services 901 P Street, Sacramento, CA 95814 (916) 651-2987

-----Original Message-----

From: Jewell, Michael S SPK [mailto:Michael.S.Jewell@usace.army.mil]
Sent: Friday, January 06, 2012 9:15 AM To: Enos, Cassandra Cc: Hoffman-Floerke, Dale; mebbin@emslp.com; Foresman.Erin@epamail.epa.gov; Robershotte, Paul J SPD; Crothers, Cathy; Morrow, Michelle M; Hagler.Tom@epamail.epa.gov; Nepstad, Michael G SPK Subject: RE: Concurrence on 404 Purpose statements (UNCLASSIFIED) Classification: UNCLASSIFIED Caveats: NONE Cassandra:

I'm not sure if Mike Nepstad had a chance to talk to you before he went on vacation but we'd like to concur "officially" on the purpose statements for CWA 404. Respectfully, we'd like a letter from you requesting our concurrence. The letter should be sent to: COL William J Leady, Commander US Army Corps of Engineers, Sacramento District 1325 J Street Sacramento, CA 95814 Make sure to mention in your letter that you've been working with representatives of his Regulatory Division. I know, I know... I'm sounding like a typical bureaucrat. But there are good reasons to do this officially. Once we get your letter, I promise we'll respond quickly.

Thanks! Michael S Jewell Chief, Regulatory Division US Army Corps of Engineers, Sacramento District

-----Original Message-----

From: Nepstad, Michael G SPK Sent: Thursday, December 22, 2011 5:06 PM To: Enos, Cassandra; Hagler.Tom@epamail.epa.gov Cc: Hoffman-Floerke, Dale; Marc Ebbin; Foresman.Erin@epamail.epa.gov; Jewell, Michael S SPK; Robershotte, Paul J SPD; Crothers, Cathy; Morrow, Michelle M Subject: RE: Concurrence on 404 Purpose statements (UNCLASSIFIED) Classification: UNCLASSIFIED Caveats: NONE

The Corps has reviewed the attached MOU Checkpoint A - Basic and Overall Purpose for the Entire BDCP, and hereby AGREES, in accordance with the draft Memorandum of Understanding on the Integration Process for the Bay Delta Conservation Plan, these statements are acceptable and consistent with USACE regulatory procedures under Section 404 of the Clean Water Act.

Basic and Overall Project Purpose Statement Pursuant to section 404 of the clean water act

Basic Purpose

The restoration and enhancement of ecological functions, including aquatic habitat restoration; and improvements to the water conveyance infrastructure and the supply and reliability of water deliveries conveyed.

Overall Project Purpose

To implement the Bay Delta Conservation Plan (BDCP), which has been designed to achieve the co-equal goals of providing for the conservation and management of aquatic and terrestrial species, including the restoration and enhancement of ecological functions in the Delta, and improving current water supplies and the reliability of delivery of water supplies conveyed through the State Water Project (SWP) and the Central Valley Project (CVP). To accomplish these goals, the BDCP sets out a comprehensive, integrated conservation strategy that involves: 1) substantial modifications and improvements to SWP and CVP water conveyance facilities in the Delta and vicinity, including the potential addition of new points of diversion in the north Delta and other facilities to convey water around the Delta; 2) operational changes to the SWP and CVP; 3) extensive protection and restoration of physical habitat, including actions to expand the extent and quality of intertidal, floodplain and other aquatic habitats in the Delta and vicinity; and 4) actions to address other stressors that adversely affect covered species. The BDCP will achieve these goals in a manner that meets the requirements of applicable federal and state laws, including the Endangered Species and Clean Water acts, and in accord with the Sacramento-San Joaquin Delta Reform Act of 2009.

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-----Original Message-----

From: Enos, Cassandra [mailto:cenos@water.ca.gov] Sent: Thursday, December 22, 2011 1:59 PM To: Hagler.Tom@epamail.epa.gov; Nepstad, Michael G SPK Cc: Hoffman-Floerke, Dale; Marc Ebbin; Foresman.Erin@epamail.epa.gov; Jewell, Michael S SPK; Robershotte, Paul J SPD; Crothers, Cathy; Morrow, Michelle M

Subject: Concurrence on 404 Purpose statements

Mike and Tom - Thanks for meeting today to discuss the BDCP CWA 404 purpose statements. Attached (and below) is the final language we agreed upon at the meeting. Please provide an email concurrence that these purpose statements are acceptable to your respective agencies. If you have any questions I will be available today and tomorrow morning then off until December 28th. Thank you and have a happy holiday! Cassandra

Basic and Overall Project Purpose Statement Pursuant to section 404 of the clean water act

Basic Purpose The restoration and enhancement of ecological functions, including aquatic habitat restoration; and improvements to the water conveyance infrastructure and the supply and reliability of water deliveries conveyed.

Overall Project Purpose To implement the Bay Delta Conservation Plan (BDCP), which has been designed to achieve the co-equal goals of providing for the conservation and management of aquatic and terrestrial species, including the restoration and enhancement of ecological functions in the Delta, and improving current water supplies and the reliability of delivery of water

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action 1 - water operations and conveyance Infrastructure The proposed action is the implementation of the Water Operations and Conveyance Conservation Measures component of the Bay Delta Conservation Plan. The water operations and conveyance conservations measures are designed to allow greater flexibility in balancing the needs of the Sacramento-San Joaquin Delta estuary (Delta) with reliable water supply. Specifically, actions include modifications to the State Water Project and Central Valley Project conveyance facilities, including the addition of new points of diversion in the north Delta, and other facilities to convey water around the Delta. These water conveyance measures will align water operations in the Delta to better reflect seasonal flow patterns, reduce the physical impact of a southern Delta diversion point, and protect fish with state of the art fish screens.

Cassandra Enos-Nobriga Program Manager Division of Environmental Services 901 P Street, Sacramento, CA 95814 (916) 651-2987 Classification: UNCLASSIFIED
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